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FIFTY-FIRST SESSION

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SIXTH COMMITTEE
20th meeting
held on
Monday, 14 October 1996
at 3 p.m.
New York

SUMMARY RECORD OF THE 20th MEETING

Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

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4 December 1996

ORIGINAL: ENGLISH

96-81403 (E)

Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.10 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/49/10 and A/49/335; A/51/275 and Corr.1 and Add.1)

Cluster II (articles 5-10) (continued)

1. The CHAIRMAN requested the representative of Canada to report on the informal consultations which he had been conducting on article 7.

2. Mr. NUSSBAUM (Canada) said that the aim had been to produce a text to be used as the basis for further discussion. It had not been possible to meet all the concerns expressed: some delegations, for example, wanted to delete the article in its entirety. However, the approach taken in his proposal had secured broad support from a large number of the delegations which he had been able to sound out. The proposal took the form of three alternatives for article 7. He read out the text, which would be circulated as a conference room paper.

3. Mr. YIMER (Ethiopia) said that the assertion by the representative of Canada that the proposals resulting from the informal negotiations on article 7 enjoyed broad support was unwarranted. Her delegation, for one, had not been consulted.

4. Mr. KASSEM (Syrian Arab Republic) said that his delegation was still not happy with the wording of articles 7 and 8 and would submit amendments in writing for circulation as a conference room paper.

5. The CHAIRMAN said he took it that the Working Group wished all the proposals on cluster II to be referred to the drafting committee.

6. It was so decided.

Cluster III (articles 11-19 and 33)

7. Mr. PAZARCI (Turkey) introduced his delegation's proposal concerning cluster III (A/C.6/51/NUW/WG/CRP.37). The proposal differed from the draft articles of the International Law Commission on information and notification concerning planned measures essentially in its more general treatment of the obligation to notify and the procedure to be followed, which still allowed the watercourse States the option of using other agreed methods.

8. The first reason which had prompted Turkey to make the proposal was that the Working Group was preparing a framework convention, which should contain only fundamental principles and general arrangements for their implementation. It was inconsistent with the notion of a framework convention to enter into excessive detail. The second reason was that existing positive international law contained no general obligation on notification, and such an obligation could come into play only if there was a prior agreement between the watercourse States. That point had been recognized clearly in the Lake Lanoux arbitration.

9. As the commentary to the Commission's draft articles pointed out, there were a number of examples of the adoption of the principle of notification in international practice and some fewer cases of the provision of a notification procedure. It was unrealistic to try to adopt a principle of notification and even less a notification procedure applicable to specific agreements between States. It would therefore be wrong to impose such a method, bearing in mind the need to balance the legitimate interests of the different categories of watercourse States. His delegation believed that its proposal met the essential needs of all such States.

10. Mr. ŠMEJKAL (Czech Republic) said that the substance of the draft articles contained in cluster III required little comment, but it might have been preferable for the Commission to have offered, in what was a framework convention, a briefer treatment of the issues of information and notification, defining a few obligations in general terms and leaving other matters for States to regulate in implementation agreements. The Working Group could either try to redraft those provisions which went into excessive detail or work on the basis of the Turkish proposal, which reflected a more general approach to the subject.

11. Mr. FRANDLER (Hungary) said there was a discrepancy between the title of article 12, which referred to "possible adverse effects", and its content, which referred to a "significant adverse effect", supposedly a lower threshold than the "significant harm" mentioned in article 7. In the interest of consistency, the word "significant" in article 12 should be replaced by "possible". The second part of the article was too vague, and he therefore suggested including documentation, as well as technical data and information, on any environmental impact assessment carried out, so that the last sentence would read: "Such notification shall be accompanied by available technical data, information and documentation, including, if appropriate, the results of an environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures."

12. Mr. de VILLEHEUVE (Netherlands) said he disagreed with the representative of Turkey, and wished to retain the essence of part III of the draft articles. A framework convention should offer minimum protection in cases where there was no pre-existing agreement and an adverse impact was possible. The Rio Declaration on Environment and Development stated clearly in principle 19 that States should provide timely information on activities that might have significant adverse transboundary environmental effects, and should consult with potentially affected States at an early stage. The wording proposed by the representative of Turkey was too vague to offer effective guarantees to potentially affected States.

13. Nevertheless, his delegation proposed some small changes to articles 12 and 14 (A/C.6/51/NUW/WG/CRP.8), which would oblige the notifying State to look into any possible adverse effects of its planned measures, to make that information available to the States concerned, and to bear the cost of collecting such information. Furthermore, in line with the Espoo Convention on Environmental Impact Assessment in a Transboundary Context, provision should be made for an environmental impact assessment to be carried out.

14. Mr. VORSTER (South Africa) said the process outlined in part III was too rigid and, notwithstanding the proviso in article 13 that States could agree otherwise, would benefit from being more flexible, interactive and participatory, as agreement between watercourse States could not be expected to coincide precisely with the procedural steps proposed in the draft articles. The fact that the planning process normally consisted of a series of consecutive steps was not adequately taken into consideration. Information had to be supplied by the notifying State on an ongoing basis, rendering the six-month evaluation periods unnecessary. The notified State should, in turn, be obliged to react to each successive planning stage in reasonable time, and the use of joint commissions or similar devices should be provided for in the draft articles.

15. The articles as they stood also allowed a country to stall for time, making it possible for a year to pass before the notified country realized that no true evaluation of the planned measures would be forthcoming. He suggested that the fixed six-month periods should be replaced by a general standard requiring a response from either the notifying or the notified State within a reasonable period of time. Also, more stringent sanctions were needed against both the notifying and the notified States for failure to comply with the requirements; the current text had no effective sanctions for a watercourse State that failed to respond to the notification of a planned measure.

16. Mr. MANNER (Finland) said that there were already provisions in international law which obliged States to notify other States of activities that might have adverse effects on their environment, as the representative of the Netherlands had pointed out. For example, in article 3 of the Espoo Convention, which was not even mentioned in the commentary by the International Law Commission, European States had agreed to notify each other of such activities as early as possible, and no later than when informing their own public. As long ago as 1974, Denmark, Finland, Norway and Sweden had concluded a treaty on the protection of the environment which contained similar clauses. The principle of an obligation of notification was becoming more and more widely used in international law. Lastly, he agreed with those representatives who had expressed a desire to see a reference to an environmental impact assessment included in the convention.

17. Mr. VARSO (Slovakia) said that a balance needed to be struck in part III between the rights and duties of upstream and downstream watercourse States. The convention was intended to provide a framework to determine how States could use watercourses; that principle was not subordinate to the principle of providing regulations to protect the watercourse, although such regulations were, of course, essential. It was important to take into account the concerns of the downstream watercourse States, a matter of good-neighbourliness. To that end, it was essential to exchange information and to consult on planned measures

which might have an adverse effect on a neighbouring State. The term "significant adverse effect" was a useful one in that context, and should be retained. The suggestion by the representative of Turkey to make part III a more general statement of principles was worthy of further consideration, as it would provide a clear guide as to what was to be regulated and what the convention was intended to achieve.

18. Mr. YIMER (Ethiopia) said that, while he was not against the principle of notification, he did find some of the obligations contained in part III too onerous. For example, the wording in article 12, where the threshold established by "significant adverse effect" was lower than that of "significant harm", was too strong. In article 13, the six-month period allowed for the reply to notification, and its possible extension, was unduly unfair on the notifying State, which could have its plans delayed by up to a year. He agreed that cooperation was desirable, as required in the first part of article 14, but proposed that the article should end after "... for an accurate evaluation", since the last part, requiring the consent of the notified State, amounted to a veto on the part of the latter State. The proposal made by the representative of Turkey was more realistic than, and an improvement on, the current draft articles.

19. Mr. ROSENSTOCK (Expert Consultant) explained that the International Law Commission had sought a middle way between casual requests for information and the very high standards practised by the Nordic countries; it had simply tried to establish a process for the exchange of information in a timely fashion. The notified State had no veto; to talk of "reasonable time" would be unnecessarily vague, while six months was not actually a long time in the lifespan of a major watercourse project. Besides, provision was made in article 19 for cases where urgent, not to mention emergency, action was required.

20. If a middle course was not struck between the conflicting views aired so far, nothing would be achieved. That would be particularly unfortunate since part III was essentially about practical matters; the principles involved were not of the same order as those in articles 3 to 10.

21. The fine-tuning suggestions made by the representative of South Africa on interim phases of agreement could be usefully discussed further. Part III was intended to ensure there was a reasonable flow of information and reasonable opportunities for consultation and negotiation, not to put an excessive burden on developing countries. On the basis of the comments he had heard so far, the draft articles did seem to strike a reasonable middle course between the conflicting views that had been presented.

22. Mr. KASSEM (Syrian Arab Republic) said the fact that the convention was to be a framework convention did not mean it could not contain precise obligations and rights. After all, the International Law Commission was duty-bound under Article 13 of the Charter of the United Nations to seek the progressive development of international law, and if that law was to be useful, it needed to be precise. He agreed with the representative of the Netherlands that the articles forming part III should be retained and reinforced, for example, by adding a proviso that if the procedure laid down was not followed, a State could invoke article 33, to which his delegation would be suggesting some amendments in due course. He agreed with the Expert Consultant that the notified State had

no veto, since either party could always invoke article 33 in cases of disagreement.

23. Ms. BARRETT (United Kingdom) said that article 12 needed to be more specific if it was to be effective. The word "timely" was too imprecise to reflect the objective of the article, which was to ensure that notification took place sufficiently early to permit meaningful consultations and negotiations. She agreed with the suggestion made by the representative of Finland that article 3, paragraph 1, of the Espoo Convention provided a useful model, with its reference to notifying other States no later than when informing the ratifying State's own public. The text was defective in that it contained in specific requirement that the notifying State should carry out an initial environmental impact assessment and make the results available to States that might be affected by its actions. The absence of such a requirement was not consistent with current developments in international environmental law. For example, articles 205 and 206 of the United Nations Convention on the Law of the Sea required States to carry out an assessment and suggested that the written amendments proposed by the Netherlands should be used as a basis for discussion by the Drafting Committee.

24. Article 12 had to be read in conjunction with article 31, and no exemption to the obligation to provide available information was made for confidential industrial or commercial data. The Drafting Committee should also consider that question at the appropriate time.

25. Mrs. ESCARAMEIA (Portugal) said she supported the statements made by the representatives of the Netherlands, Hungary, Finland, the Syrian Arab Republic and the United Kingdom. She drew attention to the amendments proposed by Portugal, contained in document A/51/275, which had been made in a constructive spirit. The draft articles under consideration were necessarily detailed and provided a sound basis for additional work.

26. Mr. NGUYEN DUY CHIEN (Viet Nam) said he endorsed the statements made by the representatives of Hungary, the Syrian Arab Republic, Portugal, the Netherlands and others in support of the draft articles under consideration, which reflected a reasonable approach to the subject-matter. The steps envisaged therein would serve to strengthen good relations and promote cooperation between neighbouring countries. The articles should therefore be used as a basis for further development.

27. Mr. REBAGLIATI (Argentina), said that the draft articles in cluster III struck a balance among the possible available options. They were extremely important because they were aimed at pre-empting disputes and promoting cooperation among riparian States with a view to avoiding serious consequences at a later stage for States embarking on or affected by planned measures. All efforts made in that connection were worthwhile. His delegation was therefore prepared to consider favourably the proposals put forward by the Netherlands, Hungary and Finland, which did not alter the balance struck in part III and possibly even improved it.

28. Mr. ROSENSTOCK (Expert Consultant), clarifying his previous statement, observed that in saying that the principles involved in cluster III were not of the same order as those in cluster II, he had not wished to suggest that the

draft articles currently under consideration were not important, but merely that they should be less conceptually challenging than those in cluster II. The current text of cluster III left room for improvement, but with a little effort it should be possible to find common ground without spending excessive time on the matter.

29. Mrs. DASKALOPOULOU-LIVADA (Greece) said that her delegation was, by and large, satisfied with the overall content of the draft articles in cluster III, which outlined procedures that met the need for information on planned measures and struck a good balance between the divergent positions. Her only serious misgiving concerned article 19, which opened the door to abuse that could undermine the significant progress achieved in the other draft articles. It was also difficult to understand the relationship between articles 19 and 28 and to reconcile the notion of urgency with that of planned measures; she would comment further on that point of the Drafting Committee. With regard to the proposal to eliminate the notification procedure and replace it with the procedure of information on request, she fully agreed with the significant arguments advanced by the representatives of the Netherlands and Finland.

30. Mr. MAZILU (Romania) said he agreed with other delegations that more account should be taken of the provisions of the Rio Declaration and that articles 12 to 19 were too detailed for a framework convention. For example, there was no need to retain provisions such as those contained in the latter part of article 14. It was crucial, however, to retain the guarantee, with a view to promoting a better balance between the interests of upstream and downstream States. His delegation would submit written proposals on the subject to the secretariat.

31. Mrs. MEKHEMAR (Egypt) said she shared the concerns expressed by the representatives of Hungary, Finland and other countries in regard to the importance of article 12 and the additions to be made to it. A watercourse was an independent unit over which no State could claim complete sovereignty. With a few amendments, the draft articles in cluster III would constitute a sound basis for addressing the concerns expressed.

32. Mr. HAMDAN (Lebanon) expressed support for the statements made by the representatives of the Netherlands, Finland, Hungary, the Syrian Arab Republic, Viet Nam, Argentina and the United Kingdom. He noted that the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal contained provisions on notification which were similar to those in the draft articles. The views of the Expert Consultant should be taken into account, especially his comment on the last part of article 14 to the effect that consent was required within the period referred to in article 13, failing which the provisions of the latter article would be null and void. His delegation supported the proposals concerning environmental impact assessment made by the representative of the Netherlands and others and trusted that care would be taken to ensure consistency in the draft articles.

33. Mr. AKHAR (Pakistan) said he first wished to qualify his statement by affirming that his delegation was ready to consider suggestions with a view to compromise. It supported articles 12 to 15, but had difficulty with articles 16 to 19 because they posed more problems than they solved. Overriding provisions, such as those contained in article 19, were unnecessary, as they nullified

article 14 and article 17, paragraph 3. Moreover, situations defined as urgent could be addressed pursuant to article 28. He therefore felt that articles 16 to 19 could be deleted.

34. Mr. CAFLISCH (Observer for Switzerland) expressed agreement with the view that the draft articles imposed excessive obligations on upstream States that were planning measures. However, in the spirit of good-neighbourliness and with environmental protection in mind, his delegation was prepared to accept the procedures set out in the draft articles, except for those described in article 33, which was inadequate. Despite the judicious caution of the Expert Consultant, various proposals had been put forward that would considerably increase the obligations set forth in part III of the text. In the case of article 13, for example, the proposal to replace a fixed period with "a reasonable period of time" was likely to be detrimental to a State planning a measure. If such trends persisted, upstream States, which should be partners and not adversaries of downstream States, would have no further interest in becoming parties to the convention. Only a balanced and moderate approach could give the convention some semblance of universality.

35. Mr. LALLIOT (France) said that the draft articles should be balanced and preserve the interests of various categories of country. He generally supported the comments made by the representatives of the Czech Republic and Romania to the effect that the main objective of a framework convention was to set out general principles. The draft articles in part III should therefore be made more concise.

36. Mr. WELBERTS (Germany) said he agreed with the views of the Expert Consultant concerning part III. His delegation had no basic objections to articles 11 to 19, although they could be made more precise. He was not unsympathetic to the proposals put forward by the representatives of the Netherlands, Finland and the United Kingdom, among others, while the proposals of the representative of Turkey contained both positive elements and drawbacks. For example, the text of article 13 proposed by Turkey removed the requirement for notification, which in his view was crucial to confidence-building and good-neighbourly relations. He wished to propose an amendment to article 33, which currently emphasized fact-finding as a means of conflict resolution. In principle, his Government supported that approach, but if the procedures provided for under article 33, subparagraphs (a) and (b), failed to settle a dispute, there was a strong possibility that States might not agree to refer the dispute to arbitration or judicial settlement as provided in article 33, subparagraph (c). It therefore supported the view of Finland that, in such instances, recourse to arbitration or judicial settlement under subparagraph (c) should not be subject to further agreement between the States concerned.

37. Mr. HARRIS (United States of America) said he associated himself with the remarks of the previous speaker. The draft articles had been studiously developed to produce a fair balance between the many competing interests and he therefore strongly supported close adherence to the current text. While he was sympathetic to the desire to address additional concerns, particularly those concerning environmental impact assessment, he felt that the global nature of the convention necessitated careful consideration of the language used with a view to ensuring that all regions of the world and all interests were fairly represented.

38. Mr. PRANDLER (Hungary) said he appreciated the relevance of the views expressed by the representatives of Finland and Germany concerning the peaceful settlement of disputes. If the procedures set out in articles 17 and 18 produced no results, recourse should be had to article 33, in particular the fact-finding singled out by the representative of Germany. He generally approved of article 19, although its contents might be better placed in article 28, to which it should at least make a cross-reference. He would be grateful if the Expert Consultant could explain whether article 19, paragraphs 1 and 2, and article 28, paragraph 1, were regarded as dealing with two different sets of problems. He believed that the two issues were interlinked and therefore suggested that the matter should be referred to the Drafting Committee.

39. Mr. ROSENSTOCK (Expert Consultant) said that article 19 did not deal with emergency situations, but with planned measures whose implementation was of the utmost urgency in order to protect public health, public safety or other equally important interests. Accordingly, the State planning measures did not have the option of implementing them within a reasonable period of time. Those were the only circumstances in which the article applied.

40. Mr. TANZI (Italy) said that part III of the draft articles established some of the least burdensome obligations in the field of environmental law; for that reason, his delegation would oppose any attempts to narrow their scope.

41. Mr. RAO (India) said that his delegation deemed the obligations laid down in part III of the draft to be somewhat inflexible. The obligations concerning notification and information would be interpreted differently by different countries; the developed countries would probably set higher standards in that regard than could be met by the developing countries.

42. His delegation agreed with the Expert Consultant that the situations envisaged in article 19 were different from those provided for in article 28. The obligations established in article 19 appeared to be balanced and reasonable.

43. Mrs. MEKHEMAR (Egypt) said that her delegation had difficulties with the six-month period provided for in article 13 and believed that the period for reply to notification should not be fixed, but should be determined by agreement between the parties. Concerning article 17, paragraph 3, her delegation believed that States should be barred from implementing planned measures during the course of consultations and negotiations.

44. Mr. de VILLENEUVE (Netherlands), referring to article 18, paragraph 1, said that in the sentence beginning "If a watercourse State has serious reason to believe ...", the word "serious" was superfluous.

45. Mr. MANNER (Finland) said that, as the spirit of compromise among watercourse States might not always be present when a dispute arose, the draft articles should provide for a system of compulsory third-party settlement. His delegation therefore believed that arbitration or other judicial settlement procedures should not be subject to further agreement between the States concerned. His delegation proposed the following amendment to article 33, subparagraph (c):

"If, after 12 months from the initial request for fact-finding, mediation or conciliation or, if a fact-finding, mediation or conciliation commission has been established, six months after receipt of a report from the Commission, whichever is the later, the States concerned have been unable to settle the dispute, they shall at the request of any of them have recourse to compulsory arbitration or other binding judicial settlement before a forum having jurisdiction in the dispute."

46. If the States concerned had not accepted the jurisdiction of the forum (i.e., the International Court of Justice), they would in any case be deemed to have accepted arbitration under the convention. In the interests of simplicity, his delegation had refrained from proposing detailed provisions on the establishment of an arbitration commission; such details could be agreed on by the States concerned.

47. Mr. CAFLISCH (Observer for Switzerland) said that the question of the peaceful settlement of disputes was of vital importance for the codification and progressive development of international law, especially in cases where States, because of geographical or other reasons, shared a natural resource. Article 3, paragraph 2, and articles 11 to 19 of the draft dealt with situations in which a new activity planned by one or more watercourse States threatened to cause significant harm to other watercourse States. Several delegations had suggested that the fixed period for notification in such cases should be replaced by a reasonable period of time; an independent third party would clearly be in the best position to assess whether a given period was reasonable. That issue must be resolved rapidly and satisfactorily; otherwise, a watercourse State could block the legitimate uses of a watercourse by other States for an indefinite period.

48. Currently, the only binding settlement procedure provided for in the draft was contained in article 33, subparagraph (b), which provided that if negotiations and consultations failed, a State party to a dispute could unilaterally initiate a fact-finding procedure. That provision was insufficient, first, because it dealt only with the determination of the facts in the case, whereas disputes could also relate to the interpretation and application of the treaty, and secondly, because the decisions of the Fact-Finding Commission referred to in article 33, subparagraph (b) (i), were in no way binding on the parties to the dispute.

49. His delegation therefore proposed a three-step procedure, consisting of: first, consultations and negotiations; second, if such consultations and negotiations did not take place within a fixed period of time, each State party could unilaterally initiate a conciliation procedure; and third, if the conciliation procedure failed to resolve the dispute within a given period, and if all States parties to the dispute had accepted the jurisdiction of the International Court of Justice, the earliest petitioner could submit the dispute to the Court. Otherwise, that same party could unilaterally initiate an arbitration proceeding, the details of which would be worked out at a later stage.

50. The proposal which he had just outlined was in keeping with contemporary trends in environmental law, as exemplified by the 1992 Convention on the Protection and Use of Transboundary Courses and International Lakes, and by

part XV of the United Nations Convention on the Law of the Sea, which was also based on a choice of dispute settlement procedures.

51. Mr. AKBAR (Pakistan) said that his delegation supported the Finnish proposal and agreed that the draft articles should provide for compulsory dispute settlement mechanisms.

52. Mr. KASSEM (Syrian Arab Republic) noted with satisfaction the inclusion of article 33, which had been lacking in the 1991 version of the draft articles. However, the article should provide for compulsory recourse to the International Court of Justice or to binding arbitration in the event that consultations and negotiations did not lead to settlement of a dispute. In addition, article 33, subparagraph (b) (i), did not specify how the Fact-Finding Commission was to be established.

53. Mr. HARRIS (United States of America) said that his delegation found it difficult to form an assessment of article 33 until the reading of all the draft articles had been completed.

54. Mr. PRANDLER (Hungary) said that, while his delegation understood the concerns expressed by the United States representative, it welcomed the Finnish proposal and shared the views expressed by the Swiss representative concerning the need for compulsory dispute settlement procedures.

55. Mr. YIMER (Ethiopia) said that, while his delegation could accept subparagraph (c) of article 33, it believed that the other dispute settlement mechanisms provided for were overly rigid and thus unsuited to a framework convention.

The meeting rose at 6.10 p.m.

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General Assembly

FIFTY-FIRST SESSION

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SIXTH COMMITTEE
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at 3 p.m.
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SUMMARY RECORD OF THE 21st MEETING

Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

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4 December 1996

ORIGINAL: ENGLISH

96-81427 (E)

Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.15 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/49/10 and A/40/335; A/51/275 and Corr.1 and Add.1)

Cluster III (articles 11-19 and article 33)

1. Mr. LOIBL (Austria), supported by Mr. de VILLENEUVE (Netherlands), said that article 33 was decisive for the future success of the convention. His delegation therefore welcomed the Finnish and Swiss proposals and hoped that the discussion would proceed along the lines indicated by those delegations.

2. Mrs. ESCARAMEIA (Portugal), drawing attention to her delegation's comments on article 17 in document A/51/275, which were also relevant to the discussion of article 33, said that the six-month rule could not be inflexible, as sufficient time must be allowed for an arbitral procedure should States parties decide to resort to it. Her delegation welcomed the suggestions made by Germany, with the support of Finland, for strengthening compulsory arbitration mechanisms, and agreed that no additional agreement should be required for an arbitration procedure to take place.

3. Ms. BARRETT (United Kingdom) said that her delegation, while welcoming a preliminary exchange of views on article 33, would determine its position on the article in the light of the other provisions of the convention. Her delegation therefore suggested that the article should be referred to the Drafting Committee together with the final clauses, because whatever position the Working Group adopted on the permissibility of reservations to the convention would have a significant bearing on the formulation of article 33.

4. Mr. HARRIS (United States of America) endorsed the views expressed by the United Kingdom representative. It was important to have an overall view of the obligations that would be assumed by the parties to the convention in order to determine whether those obligations should be subject to any dispute settlement mechanisms and, if so, which ones.

5. Some delegations had expressed the view that the provisions of article 33 should be tightened in order to bring them into line with current practice in the field of multilateral environmental treaties. In evaluating the article's dispute settlement provisions, two central questions should be kept in mind. First, were the parties required to enter into some type of dispute settlement process, whether conciliation, fact-finding, arbitration or formal adjudication?

And second, were the decisions reached through such mechanisms legally binding on the parties? The draft convention imposed on States a general obligation to enter into consultations and negotiations with a view to resolving disputes. If those means failed to produce a settlement, then article 33 provided for compulsory fact-finding and for non-compulsory mediation or conciliation.

6. Virtually all recent international environmental treaties required States parties to resolve disputes. Where they were unable to do so, the outcome depended on whether the States concerned had, upon becoming parties to the convention, agreed to settle disputes through the International Court of Justice, arbitration or another method. In the absence of such agreement, the parties were required to submit the dispute to non-binding conciliation. The question arose, therefore, whether compulsory fact-finding was truly less rigorous than compulsory conciliation. The International Law Commission's emphasis on fact-finding recognized that, in such a highly technical area, the resolution of questions of fact was central to an equitable settlement of disputes.

7. His delegation would not be opposed to including a provision allowing States parties to accept either compulsory and binding arbitration or resolution by the International Court of Justice. Where the parties did not agree to a common mechanism, disputes would be subject to compulsory conciliation, a process that led to a recommended solution. If such a provision was included, however, it would be necessary to specify the arbitration and/or conciliation procedures to be adopted.

8. Mr. PAZARCI (Turkey) said that his delegation wished to reply to the objections raised by several delegations to its proposal concerning draft articles 11 to 19 (A/C.6/51/NUW/WG/CRP.37). The first objection centred on the concept of the draft articles as a framework convention, while the second alleged that the notification principle already constituted a rule of international law because it was contained in the Rio Declaration on Environment and Development. On the first issue, his delegation wished to point out that there were differences of opinion in the Working Group on the nature of the draft convention. As to the second issue, his delegation believed that some delegations had drawn hasty conclusions. There were two ways in which a clause of a declaration could acquire the force of international law: if the declaration had the status of a treaty, or if the clause embodied a customary rule. In the first place, the Rio Declaration was not a treaty; hence, it could not be argued that notification constituted a treaty obligation. Secondly, the fact that a rule was contained in the Rio Declaration, or even in a number of other universal declarations, did not mean that it had the material, psychological and moral characteristics of a rule of customary international law. At the United Nations Conference on Environment and Development, delegations had been unable to agree on principle 19 concerning notification; it had therefore been referred to a consultative group, and had finally been adopted following a lengthy debate. The delegations which had initially opposed it had finally agreed to its inclusion precisely because the Rio Declaration was not a legally binding instrument; in other words, the principle did not reflect the opinio juris of the international community. Moreover, principle 19 of the Rio Declaration could not serve as a precedent for the adoption of the mechanism provided for in the draft prepared by the International Law Commission, as it provided only for prior notification, and not for any subsequent procedure.

Unlike the Commission's draft, the Rio Declaration made no provision for a notification which amounted to seeking prior agreement from other watercourse States. Indeed, such an obligation had specifically been rejected by the arbitral tribunal in the Lake Lanoux case.

9. The considerations which he had just outlined showed that there was no international legal obligation which could serve as a precedent for the adoption of the notification principle and of a procedure whereby prior agreement must be sought from other watercourse States. In view of the need to strike a balance among opposing interests, it would appear unwise to institute such a mechanism.

10. Ms. GAO Yanping (China) said that while her delegation was not opposed to a preliminary exchange of views on article 33, it endorsed the stance taken by the United Kingdom and the United States, namely, that the article should be considered in the light of the convention as a whole. Her delegation's initial view was that article 33 should be re-examined. In accordance with international practice and Article 33 of the Charter of the United Nations, State parties to a dispute were entitled to seek a solution by any peaceful means of their own choice. As currently drafted, however, article 33 of the new convention did not give States parties sufficient freedom of choice. Furthermore, it was unclear why article 33, subparagraph (b), provided for compulsory fact-finding, but not for compulsory mediation, conciliation, arbitration or judicial settlement.

11. Mr. KASSEM (Syrian Arab Republic) said that article 33 should be amended to provide for compulsory dispute settlement mechanisms - including mediation, conciliation, arbitration or judicial settlement - which could be initiated at the request of any State party to the dispute. In the absence of such a provision, the other articles of the convention would be rendered meaningless.

12. Mr. TANZI (Italy) said that in some respects, article 33 constituted an excellent basis for dispute settlements. The obligation to enter into consultations and negotiations, as laid down in subparagraph (a) of the article, was in keeping with Article 33 of the Charter of the United Nations and the Manila Declaration. His delegation endorsed the unilaterally activable fact-finding mechanism provided for in article 33, subparagraph (b), regarding it as the first step in a dispute settlement procedure.

13. In other respects, however, article 33 was open to improvement. Even if his delegation was prepared to consider a provision establishing compulsory judicial or arbitral settlement, as proposed by Finland, it would be more appropriate and realistic to give States parties to the convention an array of choices in the context of compulsory judicial settlement. The 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, concluded within the United Nations Economic Commission for Europe, was a model in that regard; becoming a party to the Convention did not automatically imply that a State was bound by a compulsory adjudication or arbitration system, although it had the option of accepting such a system. Strengthening the system of conciliation would help to establish a middle ground between the two opposing points of view that had emerged during the debate on article 33.

14. Mr. SVIRIDOV (Russian Federation) said that article 33 was of key significance in determining the relationship of States to the future convention.

The draft prepared by the International Law Commission was well balanced, in that it provided for both compulsory and supplementary dispute settlement procedures. The first category included consultations and negotiations and, in the case of specific watercourses, recourse to existing joint machinery, subject to agreement by the States concerned. Article 33, subparagraph (b), provided for a compulsory fact-finding procedure; however, the Commission had wisely given States the freedom to resort to mediation or conciliation. Lastly, article 33, subparagraph (c), allowed for the possibility of judicial settlement or arbitration. His delegation believed that the latter procedures should be initiated only with the consent of all parties to the dispute. While article 33 was acceptable as drafted, his delegation could go along with the United States and United Kingdom proposals to defer consideration of the article to a later stage.

15. Mr. RODRIGUEZ-CEDEÑO (Venezuela) said that his delegation generally supported article 33 as drafted, although minor improvements might be necessary. The question of dispute settlement should be considered first in the context of agreements applicable between watercourse States. His delegation also believed that it was essential to maintain the obligation provided for in article 33, subparagraph (a), namely, that of expeditiously entering into consultations and negotiations. The reference to existing joint machinery was equally important, as it reflected the need for direct negotiations between the parties.

16. The second phase of dispute settlement (article 33, subparagraph (b)) was also appropriate; if negotiations conducted in good faith did not lead to a resolution, fact-finding could be initiated unilaterally, and mediation or conciliation could be initiated by agreement between the States concerned. That provision could be placed in an annex, as suggested by the Commission in its 1991 draft.

17. His delegation also endorsed article 33, subparagraph (c), which made recourse to arbitration or judicial settlement subject to the consent of all the parties involved. Owing to the nature of the convention and the sensitivity of its subject-matter, parties should endeavour to resolve their disputes through existing machinery before turning to a judicial body which, in any case, would require the consent of the States concerned. The exclusion of compulsory judicial methods, such as arbitration, would favour the universality, and hence the widest possible acceptance, of the convention.

18. Ms. FLORES (Mexico) said that article 33 was part of a well-balanced set of draft articles and the current wording should be retained. With regard to the Finnish proposal, Mexico was one of the States which recognized the compulsory jurisdiction of the International Court of Justice, but in the current instance the adoption of that proposal might be counter-productive and prevent many States from acceding to the Convention. Recourse to compulsory judicial settlement was a matter for specific agreements between States rather than for a framework convention. Her delegation was surprised that the representative of Turkey should assert that there was no obligation in international law concerning prior notification; the opposite was the case, and that was the trend followed by the Commission in the draft articles.

19. Mr. CHAR (India) said that it would be premature to comment on article 33 before the Working Group had completed its consideration of all the draft

articles. However, his delegation did have serious reservations about the article because dispute settlement should be a matter for bilateral agreements. In particular, it could not accept the proposal for a fact-finding commission.

20. Mr. HAMDAN (Lebanon) said that it was clearly difficult to reconcile delegations' approaches to what was a very important issue. His delegation tended to agree with that of Italy that the aim in article 33 should be to produce a convention which would play an effective role in international relations. It also agreed with the delegations which had argued that the convention under consideration should take a different approach to compulsory dispute settlement.

21. The United States representative had rightly referred to the various environment agreements which left room for the parties to agree on the dispute settlement method and avoided the compulsory approach. However, disputes were unlikely to arise under the environment conventions whereas the use of international watercourses was an area in which the interests of States often conflicted. Notwithstanding the Charter provisions on the mandatory peaceful settlement of disputes such an approach was often difficult in practice, and the recent trend was to interpret international law broadly when vital interests were at stake; that applied, for example, to Article 51 of the Charter concerning the right of self-defence.

22. The watercourse convention should seek to minimize frictions and oblige States parties to resolve their disputes peacefully, if necessary by binding arbitration or judicial settlement. In that connection, the proposals of the Syrian Arab Republic and of Finland were similar on the substantive issues and could perhaps be merged in a single paper.

23. Mr. SABEL (Israel) said that, in article 12, the adjective "available" should be retained and the suggested alternative of "necessary" rejected. "Available technical data" was an objective criterion, whereas "necessary" was a subjective term which was more likely to lead to disagreements. Furthermore, not all of the data was available in the early stages of the planning of a project, but that was no reason for delaying the provision of whatever was available. It might also be useful to add a reference to the updating of the data.

24. With regard to article 33, his delegation believed as a matter of principle in the mandatory nature of the peaceful settlement of disputes. It would be useful to mention various alternative methods of dispute settlement, such as those referred to in Article 33 of the Charter and the Manila Declaration, but it would be wrong to lay down a single mandatory procedure which might be appropriate for some disputes. His delegation could support the United Kingdom proposal to defer the issue until the Working Group discussed the final clauses.

25. Mr. REBAGLIATI (Argentina) said that it was difficult to envisage an objective solution to the problem dealt with in article 33. What was needed therefore was a compromise solution which would ensure broad acceptance of the future convention. It would be a pity if the dispute settlement procedure prevented a State from ratifying the convention when its substance was acceptable. While important, that procedure was not a central aspect of the text, and it should therefore be possible to find a compromise.

26. There was general agreement that States had an obligation to resolve their disputes by peaceful means and that it was, in principle, for the States parties to a dispute to choose the settlement procedure. The Commission's draft articles set out clear rules on that point, and the notion of a fact-finding commission was an interesting innovation. What was needed was something more than mere settlement by the parties to the dispute and something less than a compulsory jurisdiction.

27. His delegation would prefer the word "solutions" in subparagraph (a) to appear in the singular; the qualification "equitable" should be deleted.

28. Mr. ROSENSTOCK (Expert Consultant) said that the Commission's thinking on article 33 had been accurately summed up by the representative of Venezuela, the United States and Mexico. The representative of Argentina was also right to say that dispute settlement was not a central aspect of the convention.

29. The Commission had reviewed the global conventions on the environment and other topics, but had found no broad practice of compulsory binding dispute settlement. It had also borne in mind that consent and cooperation between States were the tonic note struck throughout the draft articles. In view of the complexity of possible disputes, fact-finding had seemed useful and had been made compulsory but not binding.

30. The Commission had also considered the various conventions with opting-in and opting-out clauses. The main reason why it had not followed that model was that the draft articles were intended as a framework convention: in most cases States would enter into bilateral agreements including appropriate dispute settlement mechanisms.

31. Mr. VORSTER (South Africa) said that his delegation had noted the argument that regional solutions were not necessarily always appropriate, but the system established in the Southern African Development Community (SADC) might be of interest to the Working Group. The SADC protocol on shared watercourse systems provided for compulsory binding dispute settlement by a tribunal to be established under the main SADC agreement. Accordingly, the South African delegation had no difficulty in supporting the Finnish proposal, although it could see that such a solution might not be acceptable to all delegations; it did not wish at the current stage to comment on the time schedule specified in the proposal.

32. Mr. LALLIOT (France) said that article 33 was too long and detailed for a framework convention. Subparagraph (b) (vi), for example, even specified how the expenses of the Fact-Finding Commission should be distributed. In its excellent work the International Law Commission had invoked the general structure of the existing method of dispute settlement but it should have concentrated only on the essential principles thereof. This delegation proposed that the article should be reduced to a single paragraph, which might read: "The watercourse States shall take all appropriate measures to end peacefully and as quickly as possible any disputes between them with respect to the non-navigational uses of the watercourse in question". An alternative solution would be to retain the chapeau and subparagraphs (a) and (b) while deleting all six of the subparagraphs of subparagraph (b).

33. His delegation was ready to examine the Swiss proposal but would like to see it in writing; it had no objection to deferring the question of dispute settlement until the Working Group considered the final clauses.

34. Mr. HARAJ (Iraq) said that article 33 was one of the most important of the draft articles. However, the dispute settlement machinery proposed by the Commission would not be effective because it depended on acceptance by all the States parties to a dispute, so that opposition by one State would prevent a solution. His delegation was in favour of mandatory provisions on arbitration and judicial settlement and it therefore supported the proposal by the Syrian Arab Republic. It had submitted its own proposal to the secretariat in writing. Recourse to the International Court of Justice was a trend which the United Nations was trying to consolidate. Some of the Secretary-General's proposals in that regard had already been put into effect, and the trend had been further encouraged by the adoption of General Assembly resolution 47/120 on "An Agenda for Peace".

35. Mr. LEE (Republic of Korea) said that his delegation supported the Commission's draft articles because they struck a balance between the available procedures and because they were themselves procedural in nature and allowed States to enter into agreements of their choice. As the United Kingdom representative had pointed out, it would be better to defer consideration of the issue until other related matters had been dealt with.

36. Mr. MANNER (Finland) noted that recourse to a fact-finding commission was the only provision of article 33 binding on the parties to a dispute. While no one could object to the establishment of such a commission, his delegation had proposed the inclusion of a rule requiring the parties to submit the dispute to either arbitration or judicial settlement. In the light of the discussion, it supported the Swiss proposal that a compulsory settlement procedure should begin with mediation or conciliation.

37. His delegation was glad that the United States representative had mentioned three environmental protection conventions, which contained binding mediation or conciliation procedures. Compulsory arbitration or judicial settlement should be the last resort, although the parties to a dispute could agree to use that mechanism immediately. The binding procedures contained in most of the environment treaties depended on the will of the parties. Finland also endorsed the point made by the representative of Lebanon that the settlement procedures depended on the nature of a treaty. It was therefore important for the draft articles to include compulsory settlement procedures. It might be remembered that the widely ratified United Nations Convention on the Law of the Sea contained a compulsory procedure - arbitration - agreed upon by all the contracting parties.

38. Mrs. DASKALOPOULOU-LIVADA (Greece) said she supported the proposal put forward by the representative of Finland. The incorporation of compulsory arbitration in internationally binding instruments was the only way to guarantee good-neighbourly relations and, indeed, peace and security. The text before the Working Group did not go far enough in establishing such compulsory procedures, which either party should be able to invoke at any time. The Finnish amendment would meant that article 33 would have a full spectrum of dispute-settlement measures, ranging from negotiations to arbitration and judicial settlement. In

the context of that amendment, she would be prepared to accept the role of the Fact-Finding Commission, though she would have preferred a conciliation commission in its place.

39. Mr. ŠMEJKAL (Czech Republic) said that the provisions in article 33 were too minutely detailed for a framework convention. He would have preferred a more concise version covering the basic principles, along the lines of article 14 of the United Nations Framework Convention on Climate Change. The focus on the Fact-Finding Commission was too narrow, but he agreed with the basic approach and felt that the stronger measures proposed by Finland were inappropriate, given the nature of the convention.

40. Mr. SÁNCHEZ (Spain) said that article 33 failed to reach a balance between the principle of resolving disputes by peaceful means, of which Spain was a fervent supporter, and detailing the procedures needed to do so. Given the subsidiary nature of the article, the proliferation of detail, on time limits for instance, was inappropriate and, in the context of the convention, likely to hinder progress and make ratification unnecessarily problematic. He therefore supported the suggestions made by the representatives of France and Switzerland.

41. Mr. de VILLENEUVE (Netherlands) said he was surprised that standard clauses used in similar conventions were giving rise to objections, which were taking up valuable time. He supported the views expressed by the representatives of Finland and Switzerland; the comments by the United States representative were also helpful.

42. Mr. ENAYAT (Islamic Republic of Iran) said that most agreements between Iran and other countries contained clauses allowing for the peaceful settlement of any disputes. He agreed with the representative of France that it would be preferable to delete all the subparagraphs of subparagraph (b).

43. Mr. LAVALLE VALDÉS (Guatemala) said he was surprised at the prominence given in article 33 to disagreements over facts, when disagreement was just as likely to arise over the interpretation of the convention. He would like provision to be made for an obligatory, though not necessarily binding, procedure for matters which were not disputes over the facts themselves.

44. He was concerned that a so-called Fact-Finding Commission (in passing, he wondered why "fact-finding" was used rather than simply "inquiry") should have powers to make recommendations, as proposed in subparagraph (b) (v). That was surely the role of a conciliation commission; the Fact-Finding Commission should by definition restrict itself to verifying the facts, whereas the powers described in subparagraph (b) (iv) were almost identical to the wide-ranging and independent powers of a conciliatory body under international law. Furthermore, he wondered if the findings of the Fact-Finding Commission would be open to challenge. Although the Expert Consultant had said the findings would not be binding on the parties, if they were to be considered as such, the Commission would be assuming a judicial function.

45. Mr. NUSSBAUM (Canada) said that article 33, as drafted by the International Law Commission, was a reasonable compromise which would facilitate the efficient resolution of disputes.

46. Unlike certain delegations, his delegation believed that articles 11 to 19 did reflect existing customary law. In support of that view, he cited, among other provisions, articles 5 and 6 of the 1982 Montreal Rules on Water Pollution, articles 29 and 30 of the 1966 Helsinki Rules on the Uses of the Waters of International Rivers, the 1972 Declaration of the Stockholm Conference on the Human Environment and the 1992 Rio Declaration on Environment and Development, as well as various cases referred to the International Court of Justice and the Lake Lanoux case mentioned by Turkey. The kinds of obligations outlined in articles 11 to 19 were clearly in line with existing international law, which contained a clear and unambiguous principle requiring prior notice, consultation and negotiation in cases where the proposed use of a watercourse might cause harm or injury to the rights or interests of another State.

47. Mr. MORSHED (Bangladesh) said that two important treaties recently concluded in South Asia included compulsory arbitration procedures, which was perhaps indicative of a general trend. Although it would be better to have compulsory and binding procedures incorporated in article 33, he would support the compromise represented by the text as it stood. He found the move to delete the word "equitable" from subparagraph (a) a retrograde step, since the United Nations Convention on the Law of the Sea spoke of "equitable solutions" to disputes.

48. Mr. PAZARCI (Turkey) insisted that there were no universally accepted rules on notification or the procedures to be followed. The evidence referred to by those who disagreed with that view dealt for the most part with regional agreements or the implementation of international agreements at the regional level. The commentary to article 12 of the International Law Commission's draft made it clear that the principle of notification applied only at the local or regional level.

49. Mr. RAO (India) said that the convention should provide a framework within which States could develop their own mutually acceptable dispute settlement procedures, as his Government was doing. As the Expert Consultant had observed, consent and cooperation were the watchwords; mandatory procedures might prove to be counter-productive. The facts were important, but more important still was the political will to settle disputes peacefully, and that could best be achieved by including dispute settlement procedures in an optional protocol or separate document.

50. The CHAIRMAN said that members would have the chance at a later stage to come back to article 33, but not in conjunction with the final clauses, as some delegations had requested, as that was within the mandate of the Drafting Committee. He took it that the Working Group wished to send articles 11 to 19 to the Drafting Committee.

51. It was so decided.

52. The CHAIRMAN announced that Ambassador Hayes of Ireland had agreed to become the coordinator for cluster III. He would himself be prepared to act as coordinator for cluster II.

Cluster IV (articles 20-28)

53. At the request of Mr. RAO (India), Mr. ROSENSTOCK (Expert Consultant) briefly introduced articles 20 to 28, which were for the most part self-explanatory. He said that the articles had been drafted with a view to both dealing with existing pollution and preventing pollution in the future. Article 22 did not deal with the introduction of all alien or new species into a watercourse, but only with those that might have a detrimental effect on the watercourse ecosystem. In article 24, where the concept of sustainable development was introduced, "management" was not obligatory. Articles 25 and 26 stressed the importance of cooperation in regulating water flow and protecting installations.

54. Mr. RAO (India) said that his country had no major problems with part IV of the draft articles, which was forward-looking and should provide inspiration and guidance for States when drafting their own environmental regulations. Notwithstanding the central role of watercourses in the totality of environmental concerns, their environmental effects would always be limited to local and regional areas. The States concerned should apply the articles to individual users of a particular river in the light of their own needs and circumstances. As all watercourse States shared common interests, concerned efforts should be made to promote the principles contained in the draft articles, which should not become a source of further conflict in the endeavour to accommodate different interests. Against that background, he was able to support the framework convention.

55. Mr. PULVENIS (Venezuela) said that the problems addressed in part IV of the draft articles did not concern riparian States alone, as demonstrated by the importance attached by his own country to those articles, particularly article 23. He did not share the previous speaker's view that the environmental management of international watercourses had a limited effect on the overall environment. The draft articles were satisfactory in the context of a framework convention, as they provided guidelines upon which States could elaborate further. His delegation had proposed very limited amendments, which did not alter the balance of the text, and had also considered with interest Ethiopia's written comments concerning article 20. His delegation believed that article 20 could be improved by inserting the words "and, as appropriate, regenerate," after the words "protect and preserve".

56. Mrs. ESCARAMEIA (Portugal) said that her delegation's proposed amendment to article 20, contained in document A/51/275, should be revised to read "individually and/or jointly", because notwithstanding their joint responsibility, one country might be able to take additional measures that were not an available option for the other country concerned.

57. Mrs. MEKHEMAR (Egypt) said that the amendment proposed by the Portuguese delegation was constructive, because a State's individual responsibility did not preclude its collective responsibility.

58. Mrs. FERNANDEZ de GURMENDI (Argentina) said she was satisfied with part IV of the draft articles and supported the proposal of the Venezuelan representative concerning article 20. The words "and biodiversity" should be

inserted after the word "ecosystems" in that article with a view to ensuring full protection of the system.

59. Mr. ROSENSTOCK (Expert Consultant) said that according to paragraph (4) of the commentary to article 20, joint cooperative action was to be taken where appropriate. It would be more realistic if article 20 were to read "individually or, where appropriate, jointly", so that it would not lay down a rule that joint action should be taken in cases where a problem arose wholly within a watercourse State that was able and willing to assume individual responsibility for dealing with it. In his view, the words "individually and jointly" were no different from the word "jointly". He further believed that the concept of biodiversity was included in the notion of ecosystems as defined in the commentary and in the Biodiversity Convention. He doubted whether it would be realistic to include in an introductory article the concept of regeneration, which was addressed in article 21 in that prevention, reduction and control of pollution referred to restoration of the status quo ante.

60. Mr. PRANDLER (Hungary) said that the word "ecosystems" should be defined in article 2 and that article 20 could be further strengthened by including three additional elements, namely: the prevention, reduction and control of pollution; the need for ecologically sound and rational water management, conservation of water resources (including freshwater systems) and environmental protection; and the conservation and, where necessary, the regeneration of the ecosystems of international watercourses, as already proposed by the Venezuelan representative with the support of others.

61. Mr. de VILLENEUVE (Netherlands) said that he supported the proposals put forward by the representatives of Venezuela, Hungary and Portugal. The end of article 20 should be amended to read "the ecosystems related to international watercourses", in order to include ecosystems that were dependent on watercourses for their subsistence.

62. Mrs. GAO Yanping (China) said that, given the importance of protecting and conserving ecosystems, article 20 should be amended to read: "Watercourse States shall, individually and/or jointly, protect and maintain the ecological balance of international watercourses". Such wording would render the article more universally comprehensible and acceptable and align it further with the purpose of the convention.

63. Ms. Barrett (United Kingdom) said she was unconvinced by the amendment proposed by the Portuguese representative, because it was unclear and did not improve the text.

64. Mr. ELMUFTI (Sudan) said he agreed with the remarks made by the delegations of Venezuela and Egypt concerning use of the phrase "and/or". The current version of article 20 placed an obligation on all watercourse States to protect and preserve the ecosystems of all international watercourses. It should therefore be redrafted with a view to ensuring that watercourse States were obliged to protect and preserve only the ecosystems of international watercourses within their territory.

65. Mr. YIMER (Ethiopia) said he was satisfied with the existing wording of article 20, which should remain unamended. He would nevertheless appreciate an

explanation as to why the word "ecosystems" had been preferred to "environment". It would be desirable to define the term "ecosystem" in article 2.

66. Mr. ROSENSTOCK (Expert Consultant) said that paragraph (2) of the commentary to article 20 contained a reasonably clear and accurate definition of the term "ecosystem" that he would have difficulty in refining. He noted that the paragraph also explained the difference between the terms "ecosystem" and "environment".

The meeting rose at 6.05 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
22nd meeting
held on
Wednesday, 16 October 1996
at 3 p.m.
New York

SUMMARY RECORD OF THE 22nd MEETING

Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.05 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/49/10 and 335; A/51/275 and Corr.1 and Add.1)

Cluster IV (articles 20-28) (continued)

Article 21

1. Mrs. LADGHAM (Tunisia) proposed that the words "or human activity" should be added at the end of paragraph 1. She was also in favour of deleting the word "significant" for the reasons already stated in connection with article 7.

2. Mr. AKBAR (Pakistan), Mrs. MEKHEMAR (Egypt), Mr. HARAJ (Iraq), Mr. KASSEM (Syrian Arab Republic) and Mr. REBAGLIATI (Argentina) agreed that the word "significant" should be deleted.

3. Mr. de VILLENEUVE (Netherlands) said that article 21, paragraph 3, was not entirely satisfactory, as it referred to only one of many means that could be used to prevent, reduce and control pollution. His delegation had therefore proposed the amendment to paragraph 3 contained in document A/C.6/51/NUW/WG/CRP.50 on the ground that it provided States with more insight concerning measures which they might wish to take without placing any greater burden on them. However, his delegation wished to simplify the final sentence of the amendment so that it would read: "In addition, they shall, individually or jointly, prevent pollution at source of international watercourses from point sources and diffuse sources".

4. Mrs. VARGAS de LOSADA (Colombia) said that her delegation had no substantive objections to the Commission's text of article 21. It could not accept the amendment because some countries, particularly developing countries, would find it difficult to assume some of the responsibilities it entailed.

5. Mr. REBAGLIATI (Argentina), supported by Mrs. ESCARAMEIA (Portugal) and Mr. LOIBL (Austria), said that in the light of the concerns expressed by the previous speaker, the Netherlands amendment could be modified so as to render it more acceptable to all States.

6. Mr. PRANDLER (Hungary) supported the Netherlands proposal.

7. Mr. YIMER (Ethiopia) said that the Netherlands proposal was unnecessarily detailed and sought to impose stringent obligations which developing countries would find it difficult to fulfil. Moreover, the ideas which it contained could be covered by bilateral and multilateral agreements. He therefore supported the current wording of the article and emphasized the importance of retaining the word "significant", which should not be deleted from any draft article.

8. Mr. VARŠO (Slovakia) said that the objective of the framework convention was not to protect nature and the environment. However, the effects of using international watercourses should be taken into account, and the word "significant" should therefore be retained.

9. Mr. CALERO RODRIGUES (Brazil) said that the Netherlands amendment was useful. However, paragraph 2 of the draft article would be improved if it were amended to read "Watercourse States shall, at the initiative of one of them, ...". He also felt that the sentence following subparagraph (b) of the Netherlands proposal might be better placed in paragraph 2, in that it seemed to define the obligation laid down therein.

10. Mr. MAZILU (Romania), supported by Mr. PAZARCI (Turkey), Mr. CHAR (India), Mr. LALLIOT (France) and Ms. GAO Yanping (China), said that it would be advisable to retain the current wording of article 21 with a view to achieving a consensus, as it was well balanced and not too detailed.

11. Mr. de VILLENEUVE (Netherlands) said there was a need to ensure that the quality of the water in international watercourses matched their agreed uses, in which case a closer link between paragraphs 2 and 3 merited consideration. The objective of his delegation's amendment was not to place heavier burdens on States, but to elaborate on the optional measures available to them. He was therefore ready to consider the Brazilian proposal and to seek a middle ground with a view to improving the text.

12. Ms. BARRETT (United Kingdom) said that her delegation was keen to support the Netherlands proposal, which was constructive and made the text more flexible, but agreed that it was too detailed. One compromise solution would be to omit the final sentence following the proposed subparagraph (b).

13. Mr. MANNER (Finland) introduced his delegation's proposed amendment to article 21, paragraphs 1 and 2 (A/C.6/51/NUW/WG/CRP.48). The amendment was not substantive, and was aimed merely at improving the text by combining the wording of the paragraphs in a different order, although it did omit the word "significant".

14. Mr. HARRIS (United States of America) said he wondered whether the standard of care expected from Governments should be set forth in both articles 21 and 22. The commentary referred to that standard as due diligence, which was specified in draft article 7. Although he was not necessarily saying that it should also be specified in articles 21 and 22, its omission might raise questions as to whether different standards were intended. Otherwise, he agreed that the Netherlands proposal could be shortened to a form more readily acceptable and more appropriate to a framework convention.

15. Mr. LALLIOT (France) said that the inclusion in article 21 of the obligation to exercise due diligence might pose problems.

16. Mrs. DASKALOPOULOU-LIVADA (Greece) said that the Netherlands proposal introduced helpful clarifying elements that could also be found in other international instruments, particularly the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, concluded within the United Nations Economic Commission for Europe. That Convention also provided guidelines as to what constituted "best environmental practice". Her delegation had no strong position regarding article 21 and believed that a compromise between the Commission's version and the Netherlands proposal should be possible.

17. She agreed with the United States representative that many delegations, including her own, would be opposed to incorporating the standard of "due diligence". In that connection, her delegation reaffirmed its stance regarding article 7.

18. Mr. CHAR (India) said that whatever standard of care was incorporated into article 7 would have a significant effect on other articles; for that reason, his delegation attached the greatest importance to article 7.

19. The CHAIRMAN said that the issue of "due diligence" could be resolved in the context of article 7.

20. Ms. BARRETT (United Kingdom) said that her delegation was keenly interested in the United States proposal to make it clear that the standard of care required was that of due diligence; her Government welcomed the explanation given by the Commission in paragraph (4) of its commentary to article 21 but believed that the text itself should be clearer in that regard. Specifically, a reference to "due diligence" should be included in article 21, paragraph 2, since it was that paragraph which spelt out the obligations assumed by States. As other delegations were reluctant to amend the text proposed by the Commission, her delegation proposed that a footnote should be inserted in the summary record of the current meeting, stating that the Working Group endorsed paragraph (4) of the Commission's commentary to article 21.

21. With regard to the Finnish proposal to clarify the definition of pollution in article 21, paragraph 1, her Government considered the current definition to be too vague, and had instructed her delegation to put forward alternative definitions based on that contained in the United Nations Convention on the Law of the Sea or other conventions. Lastly, the proposal to delete the word "significant" from paragraph 2 would not help to solve the problem of loose drafting in paragraph 1.

22. Mr. NUSSBAUM (Canada) said that his delegation endorsed the goals that the Netherlands proposal was intended to achieve and welcomed the suggestions made by Brazil and Colombia. Replying to the United Kingdom representative, he suggested that any discussion on the question of liability should be deferred until the Working Group had completed its consideration of article 7. Replying to the representative of Slovakia, he said that, according to current projections, one fourth of the world's water supply could be unsafe by the year 2000, which underscored the importance of the provisions under discussion.

23. Mr. HARAJ (Iraq) said that article 21 contained a clear definition of pollution and could be accepted by his delegation.

24. Mr. ŠMEJKAL (Czech Republic) said that his delegation was satisfied with article 21 as currently drafted, but could accept the United States proposal to introduce the notion of "due diligence".

25. Mr. PULVENIS (Venezuela) stressed the importance of the Netherlands proposal and said that there should be a basis for compromise between that proposal and the draft prepared by the Commission.

26. Mr. LABUSCHAGNE (South Africa) said that his delegation associated itself with the previous statements in support of article 21 and believed that the term "significant" should be retained.

27. Mr. AKBAR (Pakistan) reaffirmed his delegation's support for article 21, with the exception of the word "significant".

Article 22

28. Mr. SABEL (Israel) said that, while his delegation had no difficulties with article 22, it questioned whether the reference to the "ecosystem of the watercourse" might not be too broad, as the term "ecosystem" also encompassed the flora and fauna of a watercourse system. A way should be found to make it clear that the detrimental effects referred to in article 22 meant "any detrimental alteration in the composition or quality of the waters of an international watercourse", as stated in article 21, paragraph 1. Perhaps article 22 could be subsumed under article 21, or a reference to water quality could be included in article 2 (Use of terms).

29. Mr. TANZI (Italy) said that the wording of article 20 was stronger than that of article 22 in terms of protecting the ecosystem of the watercourse, in that article 20 did not refer to detrimental effects resulting in significant harm to other watercourse States.

30. Mr. AKBAR (Pakistan) said that, as in respect of article 21, his delegation's only difficulty with article 22 was the use of the term "significant", which it wished to see deleted from the convention.

31. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that her delegation associated itself with the comments made by the representative of Pakistan and also suggested that in article 22, line 2, the words "flora and fauna" should be inserted after "species, alien or new".

32. Ms. GAO Yanping (China) said that, while her delegation deemed article 22 to be generally acceptable, it proposed that the words "which may have effects detrimental to the ecosystem of the watercourse" should be amended to read "which may have adverse effects on the ecological balance of the watercourse".

33. Mr. NGUYEN DUY CHIEN (Viet Nam) said that his delegation could go along with article 22 as currently drafted, but wished to associate itself with the statements made by previous speakers regarding the deletion of the word "significant" in articles 21 and 22.

34. Mr. YIMER (Ethiopia) recalled that the Chairman had requested delegations, in commenting on the remaining articles of the convention, to refrain from restating their positions regarding the use of the word "significant". For its part, his delegation could not agree to the deletion of the term.

35. The CHAIRMAN said it was his understanding that delegations could express their overall acceptance of the draft articles without prejudice to their positions concerning the word "significant".

Article 23

36. Mr. YIMER (Ethiopia) requested clarification regarding the use of the term "marine environment".

37. The CHAIRMAN, replying to the representative of Ethiopia, read out the first sentence of paragraph (1) of the International Law Commission's commentary to article 23.

38. Mr. MANNER (Finland) drew the attention of the Ethiopian representative to article 194, paragraph 1, of the United Nations Convention on the Law of the Sea, which read: "States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, ..."

39. Mr. YIMER (Ethiopia) said that, in the light of the preceding statements, article 23 should be redrafted to make it clear that it dealt with land-based sources of pollution of the marine environment.

40. Mr. de VILLENEUVE (Netherlands) said that his delegation endorsed article 23 as drafted.

41. Mr. HARRIS (United States of America) said that article 23 had been drafted in such a way as to reflect, as closely as possible, the approach taken in the United Nations Convention on the Law of the Sea, and should therefore be retained as drafted.

42. Mrs. ESCARAMEIA (Portugal) drew attention to Portugal's comments on article 23, contained in document A/51/275, in which it proposed that the phrase "individually or jointly" should be replaced by "individually and jointly". The reasons for the proposed amendment to article 23 were the same as those for the proposed amendments to articles 20 and 21.

43. Mr. CHAR (India) said that his delegation endorsed the statement made by the United States representative and supported article 23 as drafted.

Article 24

44. Mr. PRANDLER (Hungary) stressed the importance of article 24. Paragraph (1) of the Commission's commentary to the article was cast in terms that were intended to be sufficiently general to be appropriate for a framework agreement. Nevertheless, the article as currently drafted did not meet those expectations. His country participated in joint management mechanisms with seven neighbouring States; on the basis of that experience, his delegation

believed that the institutional provisions of article 24 should be strengthened. He read out a detailed proposed amendment which would be circulated as a conference room paper.

45. Mr. SVIRIDOV (Russian Federation) said that the Commission had been right to include the notion of sustainable development in article 24 and to give States the freedom to choose a joint management mechanism. He drew attention to his delegation's amendment (in document A/C.6/51/NUW/WG/CRP.36): the addition of "and the quality of its water" to paragraph 2 (b) was designed to reflect the main concern of the Convention, namely the use of the water of a watercourse.

46. Mr. PAZARCI (Turkey) said that the wording of article 24 was too imperative in places, since the management of the watercourse should be based on the common and free will of the watercourse States. He therefore suggested that "shall" should be replaced by "may". Furthermore, States should not be required to enter into consultations "at the request of any of them", especially if there was no question of any harm to the watercourse. The phrase should therefore be deleted.

47. Mr. YIMER (Ethiopia) said that he disagreed with the representative of Hungary: the article did not contain too little detail. As the commentary made clear, the intention was for the watercourse States to enter into negotiations but the outcome was not prejudged, and the text referred only to a management mechanism, which did not necessarily mean an institution. The details should be left to the watercourse States concerned. His delegation endorsed the amendments proposed by the representative of Turkey.

48. Mr. CALERO RODRIGUES (Brazil) said that he doubted whether it would be advisable to make any changes in article 24; he agreed with what the representative of Ethiopia had said about the Hungarian proposal. However, he disagreed with the representatives of Turkey and Ethiopia on the question of the mandatory nature of the article. If one watercourse State thought it was advisable to have a management agreement, it would be normal for the other States to enter into consultations, without the result being prejudged. His delegation reserved its position on the amendment of the Russian Federation.

49. Mr. MAZILU (Romania) said that he was inclined to support the Brazilian position since the text was well balanced. However, his delegation could accept the replacement of "shall" by "may" and it supported the Russian amendment.

50. Mrs. ESCARAMEIA (Portugal) said that in principle her delegation was in favour of retaining the Commission's text. The Hungarian proposal was perhaps an ideal one but too detailed. As a compromise, therefore, her delegation could accept the replacement of "shall" by "may". It supported the Russian proposal.

51. Mr. VARŠO (Slovakia) said that his delegation was in general satisfied with article 24 but thought that the Turkish proposal warranted consideration. Perhaps the question of "shall" or "may" could be settled in the Drafting Committee. The detailed Hungarian proposal went beyond what was required in a framework convention. The aim of article 24 was to bring the watercourse States together for consultations, but it was then for them to decide what management arrangements to make. His delegation endorsed the comments made by the representatives of Ethiopia, the Russian Federation and Brazil.

52. Mr. LALLIOT (France) said that the draft articles in cluster IV went too far for a framework convention, and further detail was certainly not needed. His delegation would make a proposal in that regard in the Drafting Committee.

53. Mr. MANONGI (United Republic of Tanzania) said that article 24 did not place a stricter obligation on watercourse States than the general obligation to cooperate contained in article 8. It was therefore correct to make only the obligation to consult mandatory and to leave other matters to the States concerned. His delegation supported the Commission's text.

54. Mrs. FERNANDEZ de GURMENDI (Argentina) endorsed the Brazilian position and suggested that in paragraph 2 (b) the qualification "rational and optimal" should be replaced by "equitable and reasonable", the language used in article 5.

55. Mrs. DASKALOPOULOU-LIVADA (Greece) said that her delegation could have supported the Hungarian proposal, but since it would be difficult for the Working Group to agree to such an amendment, it might be better to retain the Commission's text. The representative of Brazil was right to argue that "shall" should not be replaced by "may"; if the fundamental obligation to cooperate was removed, the article became superfluous.

56. Mr. HAMDAN (Lebanon) said that his delegation agreed that the obligation contained in article 24 was a general obligation to consult consistent with earlier articles, but the matter should not be left entirely to the discretion of the watercourse States. It supported the Argentine proposal concerning paragraph 2 (b).

57. Mr. HARRIS (United States) said that his delegation agreed with the many delegations which preferred to retain the Commission's text. In fact, failing an indication to the contrary, it could be taken that the United States delegation supported the Commission's text of all the draft articles in clusters IV and V. Many of the changes suggested by delegations ought perhaps to be made in the Drafting Committee.

58. Mr. LEE (Republic of Korea) said that his delegation would require more time to consider the Hungarian proposal. It was against the replacement of "shall" by "may", since mandatory consultation was required. The Working Group should bear in mind the close relationship between articles 24 and 33.

59. Mr. NGUYEN DUY CHIEN (Viet Nam) said that his delegation supported the Commission's text. It was not excessive to make the obligation to consult mandatory; consultation should in fact be a routine matter.

60. Mr. KASSEM (Syrian Arab Republic) said that the article did not go too far: the only mandatory obligation was to consult, which was a direct consequence of the obligation to cooperate. The fact that the draft articles were intended as a framework convention did not mean that the obligations contained therein must be vague and lacking in concrete effect.

61. Mr. PULVENIS (Venezuela) endorsed the position of the United States.

62. Mr. RAO (India) and Mr. AKBAR (Pakistan) said that their delegations were opposed to changing the Commission's text.

63. The CHAIRMAN said he realized that the issues under discussion were very important but progress was too slow. He appealed to delegations to keep their statements short and to the point and to focus on policy issues. Drafting suggestions should be made in the Drafting Committee. Together with the Chairman of the Drafting Committee, he was determined to comply with the decision of the General Assembly that the draft articles should be adopted by 25 November.

Article 25

64. Mr. de VILLENEUVE (Netherlands) drew attention to his delegation's amendments to article 25 (A/C.6/51/NUW/WG/CRP.50). It was proposing the amendments because the term "where appropriate" was not clear in the context and because flow regulation was a matter which should be studied carefully, given its impact elsewhere in the watercourse.

65. Mr. PAZARCI (Turkey) said that he was not sure that the article was needed, since regulation of the flow of a watercourse could be covered under the draft article on management.

66. Mr. CANDELAS de CASTRO (Portugal) said that his delegation supported the proposals of the Netherlands.

67. Mr. KASSEM (Syrian Arab Republic), said article 25 was too important to be omitted. He supported the Netherlands amendments.

68. Mr. HAMDAN (Lebanon), Mr. ENAYAT (Islamic Republic of Iran), Ms. BARRETT (United Kingdom) and Mr. SABEL (Israel) said that they, too, supported the Netherlands amendments.

69. Mr. SVIRIDOV (Russian Federation) said article 25 was acceptable in principle, but the wording in paragraph 3 was rather too strong, and he suggested that the word "control" should be replaced by "affect".

70. Mr. MAZILU (Romania) said that the article was well balanced and should be retained, although "control" should be replaced by "affect", as proposed by the representative of the Russian Federation.

71. Mr. RAO (India) said he favoured retaining the International Law Commission's draft of paragraph 3, including the word "control".

72. Mr. HARRIS (United States of America) said he could not support the Netherlands amendments, which imposed an obligation to take specific measures at the request of another State, whether or not they were appropriate, and therefore upset the balance of the Commission's draft.

73. Mr. YIMER (Ethiopia) said he agreed that the Netherlands proposal would impose an unacceptable obligation on other States; he therefore opposed it. However, he proposed moving paragraph 3, which defined the term "regulation", to the beginning of the article, and renumbering the other paragraphs accordingly.

74. Mr. HABIYAREMYE (Rwanda) supported the Ethiopian proposal.

75. Mr. CALERO RODRIGUES (Brazil) said he agreed with the United States representative that the first part of the Netherlands amendment would change the thrust of paragraph 1. Elsewhere in the draft articles, States were entitled to request consultations, whereas under the proposed amendment they would be requesting "opportunities for regulation". The commentary to the article made it clear that "where appropriate" was included so that States would not be obliged to go looking for opportunities for regulation, but only to respond to them. He had no objection to the second part of the Netherlands amendment as such, but felt it was an unnecessary statement of the obvious.

76. Mr. HAMDAN (Lebanon) said that article 25 was intended to oblige watercourse States to cooperate in their response to any needs or opportunities for regulation. He asked the Expert Consultant to clarify the need to include "where appropriate", since the article dealt with the specific application of the general obligation to cooperate, which would only apply to watercourse States.

77. Mr. ROSENSTOCK (Expert Consultant) replied that the article recognized that regulation was often, but not always, relevant to watercourse States, and that a response was only necessary when opportunities or needs already existed. He shared some of the doubts about the effectiveness of the draft, which he saw as an attempt to avoid needless interference by States in the affairs of other States. He thought the second part of the Netherlands amendment restricted the ability of States to reach agreement; after all, they might agree on less than optimal use. There was no need to hark back constantly to earlier articles, for the problem was basically a drafting matter.

Article 26

78. Mr. de VILLENEUVE (Netherlands) suggested deleting the word "serious" from paragraph 2, since it did not add anything substantial; any reason to believe there might be significant adverse effects was a serious enough reason to enter into consultations.

79. Mr. REBAGLIATI (Argentina) said he agreed with the representative of the Netherlands, and added that the words "employ their best efforts" were too vague and should be deleted.

80. Mr. HARRIS (United States of America) observed the article 7 already imposed an obligation on States not to cause significant harm to other watercourse States, and that article 26 went further in imposing an obligation on States to protect installations even if that would have no effect on other watercourse States. As there were circumstances in which unforeseen damage to installations, such as damage caused by terrorist acts, did not necessarily affect other watercourse States, it was sufficient to oblige States to employ their best efforts rather than impose a stricter standard.

81. Mr. MAZILU (Romania) said that the Commission's text should be retained in full.

82. Mr. EPOTE (Cameroon) agreed that the full text should be retained, especially with regard to the obligation on States to "employ their best efforts". Installations could be damaged by forces beyond the control of a State, and a State could have great difficulty, despite showing good faith, in repairing such damage.

83. Mr. ROSENSTOCK (Expert Consultant) drew attention to paragraph (2) of the commentary to the article, which stated that watercourse States were obliged to employ their best efforts "within their individual capabilities".

84. Mr. RAO (India), Mr. YIMER (Ethiopia) and Mr. SVIRIDOV (Russian Federation) all voiced their support for the Commission's draft as it stood.

Article 27

85. Mrs. VARGAS de LOSADA (Colombia) drew attention to the written amendment submitted by her Government to article 27, contained in document A/51/275. She agreed that all appropriate measures had to be taken, but they had to be consistent with the level of economic development of the States concerned.

86. Mr. HAMDAN (Lebanon) said he supported the Colombian amendment.

87. Mr. YIMER (Ethiopia) said that article 27 was not essential, as it merely added details to provisions contained in article 7 and in the articles on planned measures in part III.

88. Mr. PULVENIS (Venezuela) said that the concerns expressed by the representative of Colombia were justified in the case of some of the conditions listed in article 27, such as catastrophic flood, but other conditions in the list needed to be controlled, and that obligation would be weakened by the proposed amendment. The language of the article was flexible enough, in its use of the words "appropriate" and "prevent or mitigate", to meet the concerns voiced by the representative of Colombia. The article was well balanced, and he therefore opposed the proposed amendment.

89. Mr. MORSHED (Bangladesh) agreed that the conditions listed in the article were of a very varied nature, some of them being long-term, persistent phenomena such as drought or desertification, while others were fairly transient, such as ice conditions or water-borne diseases. Furthermore, there was some overlap with other articles; for example, water quality was affected by floods and salt-water intrusion and could therefore be considered an aspect of pollution. He tentatively suggested that not all of the conditions belonged on the same list.

90. Mr. NGUYEN DUY CHIEN (Viet Nam) agreed with the representative of Venezuela that the concerns of the representative of Colombia were largely unfounded, and the draft should be retained as it stood.

91. Mr. ROSENSTOCK (Expert Consultant) said that, in general, article 27 was intended to cover conditions which were not as urgent or uncontrollable as the emergency situations dealt with in article 28. The distinction was not always clear-cut, however, as situations could develop rapidly; for example, a missed or late rainy season could lead to drought, or upstream flooding could cause the

sudden appearance of water-borne diseases. Nevertheless, it was not inconsistent to cover an issue in more than one article, but rather ensured comprehensive coverage. A flood, for instance, could be considered an emergency or simply a harmful condition; it was dealt with in article 27 as a condition that might or might not have an effect on other watercourse States.

92. Ms. BARRETT (United Kingdom) said her delegation wished to propose an amendment which addressed the concerns about the wide variety of conditions listed in article 27. The scope of the article would be narrowed if the phrase "related to an international watercourse" was inserted after "to prevent or mitigate conditions". The article would then cover drought or desertification only when they were related to an international watercourse.

The meeting rose at 6.10 p.m.

UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
23rd meeting
held on
Thursday, 17 October 1996
at 3 p.m.
New York

SUMMARY RECORD OF THE 23rd MEETING

Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.05 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/49/10 and A/49/335; A/51/275 and Corr.1 and Add.1)

Cluster IV (articles 20-28) (continued)

Article 28

1. Mr. PAZARCI (Turkey) said that the definition of "emergency" in article 28 was so wide-ranging that it might pose a problem for developing countries, and he therefore suggested that the definition should be narrowed down.

2. Mr. CROOK (United States of America), Mr. KASSEM (Syrian Arab Republic), Mr. PRANDLER (Hungary) and Mr. AKBAR (Pakistan) wished to retain the article as drafted.

3. Ms. MATROOS (Botswana) said she understood that "when necessary" in paragraph 4 implied that the obligation to develop contingency plans jointly was optional, and yet as the sentence progressed it appeared to be dealing with a mandatory measure.

4. Mr. PRANDLER (Hungary) explained that the qualification "when necessary" meant that when an emergency occurred, it was obligatory to develop contingency plans, as it was imperative that States should cooperate.

5. Mr. ŠMEJKAL (Czech Republic) pointed out that there was no provision in the article for the equitable sharing of the cost of measures necessitated by an emergency.

6. Mrs. FERNÁNDEZ de GURMENDI (Argentina) asked the Expert Consultant to clarify the implications of the inclusion of "other States" as well as "watercourse States" in paragraph 1.

7. Mr. ROSENSTOCK (Expert Consultant) referred to paragraph (2) of the commentary to the article (A/49/10), where it was pointed out that "other States" would usually refer to coastal States suffering from the effects of, say, a chemical spill. Similarly, floods or diseases originating in a watercourse State could spread to other States, which was why the definition of an emergency was extended to cover non-watercourse States. It was true that there were no specific provisions in the article on the question of sharing the

costs of dealing with an emergency, although the contingency plans mentioned in paragraph 4 could include prior agreements on burden-sharing. The point was that when a catastrophe struck, action had to be taken immediately, with no delay for wrangling over the sharing of costs.

8. Mr. LAVALLE VALDÉS (Guatemala) inquired whether the reference to non-watercourse States referred only to States parties to the convention or applied also to States that were not parties to the convention; if the latter, it would not be necessary to change the text to refer specifically to States parties to the convention.

9. Mr. ROSENSTOCK (Expert Consultant) replied that the hope was that not only watercourse States, but others too, would adopt the convention.

Cluster V (articles 29-32 and article 2)

Article 29

10. Mr. CROOK (United States of America) drew attention to the amendment proposed by the United States in document A/C.6/51/NUW/WG/CRP.1. The commentary to the article made it clear that the text was intended to be without prejudice to existing international law and was not to lay down any new rules. However, despite purporting not to extend the applicability of any instrument to States not party to that instrument, the article could be interpreted as making States parties to the watercourse convention subject to certain rules contained in Protocol I of 1977 Additional to the Geneva Conventions, which the United States did not accept as customary law. He therefore called on the Working Group to address that matter in the preamble or to revise article 29 in line with the amendment proposed by his delegation.

11. Speaking on behalf of the United Kingdom delegation, he said that it, too, had similar reservations about article 29, considering that the matter belonged to the area covered by the laws of armed conflict. It the matter was to be addressed in the watercourse convention, the United Kingdom delegation would like it to be done by means of a clause making explicit the intention that the article was without prejudice to the application to international watercourses of the principles and rules of international law on armed conflict.

12. Mr. SABEL (Israel) and Mr. LEE (Republic of Korea) said that they supported the United States amendment.

13. Mr. ENAYAT (Islamic Republic of Iran) said the draft proposed by the International Law Commission was well balanced. The essential point was that article 29 was not an enunciation of existing rules. The accompanying commentary made it quite clear that the article was without prejudice to existing law and that it did not "purport to extend the applicability of any instrument to States not parties to that instrument". To limit the scope of the article to watercourse States, as had been suggested, would be an a contrario interpretation, which would permit illegal acts. Besides, watercourse States were already bound by article 26, which dealt with terrorism and sabotage.

14. Ever since the International Law Commission had begun its consideration of the matter, it had sought to apply the provisions not only to watercourse States

but also to other States, although, as was again made clear in the commentary, a State not party to the convention would not be bound by its provisions per se. He pointed out that that part of the commentary could also be found on page 77 of volume II of the 1991 Yearbook of the International Law Commission, that the original idea had been included in a resolution adopted at the 1976 conference of the International Law Association, and that it was also to be found in the sixth report of the Special Rapporteur, Mr. McCaffrey. Lastly, he cited the view of the Chairman of the Drafting Committee in 1991, Mr. Pawlak, that the inclusion of a reference to the principles and rules of international law was vital, and that the provisions should not be confined to watercourse States, since an attack could be carried out by a State that was not a watercourse State.

15. Mr. PRANDLER (Hungary) said that the article was formulated in general terms and did not prejudge the positions of respective States, and therefore his delegation could accept the current draft. However, he would be prepared to look at any new drafting suggestions if the concerns expressed about protocols to the Geneva Conventions were not sufficiently allayed by the remarks in the commentary that certain fundamental protections were afforded by the "Martens clause", which had achieved the status of general international law.

16. Mr. ROSENSTOCK (Expert Consultant), observing that the United States amendment sought to reflect the commentary more adequately, said that the only potentially substantive difference bore on the scope of the article, namely, whether it referred, as the amendment stated, only to watercourse States, or to all States or all States parties. The rest of the changes proposed were merely drafting changes.

17. Mr. CALERO RODRIGUES (Brazil) said he agreed that there was virtually no difference between the two texts. The United States amendment reflected the idea in paragraph (2) of the commentary that the principles and rules of international law that applied were those that were binding on the States concerned. Article 29 as it stood focused on what was to be protected, while the United States proposal focused on who must provide protection. The only substantive difference was that the amendment made the article applicable to watercourse States only, whereas the Commission's text could be interpreted as imposing an obligation of protection on non-watercourse States, a debatable point. Brazil could accept either proposal.

18. Mr. RAO (India) said that he had an open mind on that matter, but definitely thought the word "internal" should be replaced by "non-international", as proposed by the United States.

19. Ms. DASKALOPOULOU-LIVADA (Greece), Mr. CAFLISCH (Observer for Switzerland) and Mr. SANCHEZ (Spain) endorsed the existing text.

20. Ms. MEKHEMAR (Egypt) said that she supported the existing text because it was general and balanced.

21. Mr. KASSEM (Syrian Arab Republic) said that, since the United States amendment limited the scope of the article, he preferred to retain the Commission's text, which was in keeping with existing international and treaty law.

22. Mr. CROOK (United States of America) said that the problem for his delegation had been that there was no general agreement as to the content of the principles and rules of international law that applied in armed conflicts; the amendment sought to make it clear that the only applicable rules were those that bound the particular State that was protecting a watercourse. The use of the term "watercourse States" had not been meant to exclude other countries, and he could agree to different language, such as "Parties shall ...". He did not regard that as a point of substance but as a drafting question.

23. Mr. AKBAR (Pakistan) said he preferred the existing text because it did not lay down any new rules but simply referred to existing rules.

24. Mr. HAMDAN (Lebanon) said that if there was no real difference between the two texts it was preferable to keep article 29 as drafted.

25. The CHAIRMAN said that since there was no difference in substance between the draft text and the United States amendment, article 29 could be referred to the Drafting Committee.

Article 30

26. The CHAIRMAN said that no written amendments to article 30 had thus far been received.

Article 31

27. Mr. CROOK (United States of America), speaking on behalf of the United Kingdom, said that the article as it stood was not acceptable in the view of the British delegation. The exception to the obligation to provide information was too narrowly drawn: it should also exempt data that should be confidential on industrial and commercial grounds, as had been done, for instance, in article 8 of the Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes and article 2 of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context.

Article 32

28. Mr. CANELAS de CASTRO (Portugal), supported by Mr. CALERO RODRIGUES (Brazil) and Mr. CAFLISCH (Observer for Switzerland), said that since the first part of the article referred to two possibilities - the suffering of transboundary harm and the threat of suffering such harm - it would be more consistent to replace "occurred" by "occurs or may occur".

29. Mr. de VILLENEUVE (Netherlands) said that the scope of the article should perhaps be extended to make it incumbent upon a State party actually to introduce adequate administrative and legal procedures and not simply to provide equal treatment under the law. He would submit an amendment to that effect.

30. Mr. RAO (India) said that his delegation could not accept the article, because it interjected prematurely into the watercourse context a still-evolving principle drawn from the broad field of the environment. It should be either deleted or included in an optional protocol.

31. The problems referred to in article 32 would generally affect private individuals within a State's own territory, in contrast to a liability convention where problems such as air pollution might have implications beyond a State's borders. The mechanisms whereby individuals could take legal action against a State were not universally uniform, but differed according to the law of the region concerned. The European region had a highly developed system allowing individuals to make claims against their own and other countries, through common institutions and common conventions and with freedom of movement and free access for all - an ideal situation which did not exist elsewhere. In any case, access to the courts by foreigners was never an easy matter, requiring much expense, a knowledge of languages and an understanding of alien laws and regulations. If the intent of the article was that individuals should be left to fend for themselves to press a claim against a State, it was meaningless. Even where class actions were involved, especially by poor people, the State had to intervene to assist them to obtain justice.

32. Moreover, conflict of laws was a very complicated matter in itself. There was also the further question of how justifiable it was for any individual or group of individuals, on either side of a border, to seek to frustrate, through long court delays, an international agreement struck between two watercourse States regarding protection against significant harm.

33. Mr. AKBAR (Pakistan) said that he, too, had many reservations regarding article 32 and through it should be deleted.

34. Mr. CALERO RODRIGUES (Brazil) said that the very divergent reactions to the text by the Netherlands and India showed that it probably struck the proper balance. Its aim was to set out what non-discrimination should mean and it expressed a widely accepted principle in very fair terms. His delegation believed it should be retained as drafted.

35. Mr. SVIRIDOV (Russian Federation) said that a very complicated issue was involved: the article went beyond establishing a State's obligation to provide individuals with access to legal procedures, for it obliged a State to provide foreign legal entities with equal legal and procedural protection. Article 32 was based on a very broad interpretation of a principle for which there were some precedents but which had not yet been developed in international customary law. His delegation could not support the text as it stood, and intended to propose a compromise text.

36. Mr. CAFLISCH (Observer for Switzerland) said that article 32 was probably based on the 1909 Treaty relating to boundary waters between the United States and Canada, a frequent source in treaty law. Switzerland supported the principle in article 32, which it felt must be included in the convention proper. The article would allow for the normal application of the rule regarding exhaustion of domestic remedies. It provided both for material non-discrimination and for non-discrimination in access to the courts, and his delegation did not see what needed to be added.

37. Mr. LAVALLE VALDÉS (Guatemala) said that article 32 tried to say too much in one paragraph. The expression "shall not discriminate" was a problem: the usual pejorative connotation of the word "discriminate" - which could in fact also mean the making of perfectly justifiable legal distinctions - made it

somewhat disconcerting when coupled with the proviso that States might agree otherwise. Also, the use of the conjunction "or" between "access to judicial or other procedures" and "a right to claim compensation or other relief" implied that they were mutually exclusive concepts although that was not necessarily the case.

38. Mr. MAZILU (Romania), supported by Mr. LEE (Republic of Korea), suggested that, in view of the objections raised to article 32, informal consultations should be held between the delegations concerned, as it was important to ensure that the framework convention was acceptable to the great majority.

39. Mr. EPOTE (Cameroon) said that it might be helpful if the Expert Consultant were to give an exact explanation of the meaning of article 32 with a view to eliminating any problems of comprehension. As he understood it, watercourse States which caused harm to natural or juridical persons that were not nationals or residents of watercourse States should not discriminate against such persons.

40. Mr. REYES (Mexico) said that his delegation was willing to consider the Portuguese proposal and pointed out that, as stated in paragraph (3) of the commentary to article 32, the rule concerning non-discrimination was a residual one.

41. Mr. ROSENSTOCK (Expert Consultant) confirmed the residual nature of the rule and said that the article had been properly interpreted by the representative of Cameroon. In his view, its meaning was clear, but he clarified that meaning further by giving examples and added that consideration could be given to the drafting issue raised by the representative of Guatemala.

42. Mrs. DASKALOPOULOU-LIVADA (Greece) said that her delegation had no objection to the provisions contained in article 32, which were standard in legal assistance agreements.

43. Mr. NUSSBAUM (Canada) said that the principle of non-discrimination was important to his delegation, which viewed it as a significant factor in the growing trend to rely on civil liability as a remedy for transboundary harm. However, given the comments of the representative of India and others, he supported the Romanian proposal for informal consultations.

44. Mr. VARŠO (Slovakia) said that article 32 contained too many elements in a single sentence and was also contradictory, since it appeared to suggest that States could agree to discriminate. He therefore suggested that it should be divided into four sentences, covering in turn respect for the principle of non-discrimination, agreement otherwise reached between watercourse States, access to judicial or other procedures, and compensation.

Cluster V (article 2)

45. Mr. PAZARCI (Turkey) said that, as defined in paragraph (a), the term "international watercourses" did not cover the link between watercourses and the territory of watercourse States. With a view to drawing a distinction between international watercourses, he therefore proposed the following definition: "International watercourses are divided into the following two categories: watercourses which form a boundary; transboundary watercourses which flow

successively through two or more States". Since a framework convention should deal only with surface waters, he also proposed that the words "and groundwaters" should be deleted from subparagraph (b).

46. Mrs. DASKALOPOULOU-LIVADA (Greece) supported the definition proposed by the representative of Turkey.

47. Mr. TAMRAT (Ethiopia), Mrs. VARGAS de LOSADA (Colombia) and Mr. AKBAR (Pakistan) supported the Turkish proposal concerning subparagraph (b).

48. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that in the Spanish text the term "aguas subterráneas" in subparagraph (b) was inappropriate, as such waters did not always flow into the common terminus of a watercourse. It would be preferable to use the term "aguas subálveas". Furthermore, the term "physical relationship" in subparagraph (b) was insufficiently clear, as it could refer to canals or basins. Her delegation would therefore prefer the term "physical or natural relationship" or "physical or geographical relationship".

49. Mr. SANCHEZ (Spain) supported the Argentine proposal concerning the use of the term "aguas subálveas".

50. Mrs. MEKHEMAR (Egypt) expressed disagreement with the proposal to delete the word "groundwaters", as it referred to a whole water system that could affect other parts of a watercourse. She also proposed that subparagraph (b) should be expanded to read: ... "groundwaters forming an integral part of the surface waters and constituting ...", as the definition would then include groundwaters which did not flow into a common terminus, but which were just as important.

51. Mrs. DASKALOPOULOU-LIVADA (Greece) and Mr. PULVENIS (Venezuela) said they, too, were opposed to the deletion of the word "groundwaters" from subparagraph (b).

52. Mr. de VILLENEUVE (Netherlands) said he was opposed to the deletion of the word "groundwaters" and supported the Egyptian proposal concerning the expansion of subparagraph (b).

53. Mr. ROSENSTOCK (Expert Consultant) said he wondered whether the problem raised by the representative of Argentina was caused by a poor translation into Spanish of the word "groundwaters".

54. Mrs. FERNÁNDEZ de GURMENDI (Argentina) said that the Spanish term "aguas subálveas" referred to waters that were linked to a river and flowed to the mouth of that river, whereas the term "aguas subterráneas" covered a much broader concept.

55. Mr. ROSENSTOCK (Expert Consultant) said that, in isolation, the term "groundwaters" in English could also encompass a much broader definition than that contained in subparagraph (b), which referred to a system and did not include confined groundwater. Deletion of the word "groundwaters" was a different matter.

56. Mr. AKBAR (Pakistan) proposed that, throughout the framework convention, the word "watercourse" should be replaced by the word "river", as it was universally recognized and used in all engineering literature and relevant agreements on the subject.

57. Mr. de VILLENEUVE (Netherlands) said that his delegation was against use of the word "river"; in his country, it was difficult to differentiate between a river and a canal.

58. Mr. PULVENIS (Venezuela) said that his delegation was prepared to consider a shorter version of the Turkish proposal if it was felt that the issue which it addressed had a bearing on the standards and principles under discussion. He disagreed with the Pakistani proposal to use the word "river" and emphasized that the proposed use of the term "aguas subálveas" in the Spanish text should not be interpreted as minimizing or limiting the concept of groundwaters as reflected in the other languages.

59. Mr. CAFLISCH (Observer for Switzerland) said that his delegation could go along with article 2 as drafted and with the reference in subparagraph (b) of that article to "groundwaters constituting ... a unitary whole"; like the Commission, however, his delegation would be opposed to including confined groundwater in the definition.

60. The question arose whether definitions given in other parts of the convention should be included in article 2; if so, the definition of "regulation" in article 25, paragraph 3, should be transferred to article 2.

61. Lastly, his delegation wished to know why the Commission had chosen to define "international watercourse" before defining "watercourse".

62. Mr. ROSENSTOCK (Expert Consultant), replying to the previous question, said that the order in which the terms were defined was intended to make it clear that the convention dealt only with transboundary situations. As to the possible inclusion in article 2 of definitions found in other articles, the Commission had decided that terms used in more than one article would be defined in article 2, while definitions of terms occurring in only one article would be left in that article.

63. Mr. KASSEM (Syrian Arab Republic) said that article 2, subparagraph (a), was acceptable as drafted, especially since both contiguous and successive watercourses were governed by the same legal regime. Likewise, his delegation could accept the Commission's definition of "groundwater".

64. As to the possibility of including in article 2 definitions of terms used in other articles, his delegation had proposed a definition of the term "optimal utilization" found in article 5, and had agreed to defer consideration of that amendment to the discussion of article 2. In view of the criteria just outlined by the Expert Consultant, and the fact that "optimal utilization" occurred in at least two articles, he requested the Chairman to clarify whether the Syrian delegation's amendment should be incorporated into article 5 or article 2.

65. The CHAIRMAN said that all proposed amendments would be referred to the Drafting Committee; the Syrian delegation would have an opportunity to discuss the placement of its proposal in the context of that Committee.

66. Mr. McCAFFREY (United States of America) said that his delegation associated itself with the comments made by the Syrian representative; the same principles applied to both contiguous and successive international watercourses. While the distinction between the two types of watercourse had long been recognized in State practice, many watercourses were both contiguous and successive at different points along their courses. The question was one of emphasis; references to contiguous and successive watercourses tended to omit other, related parts of the system, such as tributaries and groundwater. In that connection, knowledge of hydrology had increased in recent years, to the point where it was recognized that groundwater and surface water were usually interrelated. Attempts to regulate surface water alone could prove futile, because water that was extracted from the ground would reduce the amount of related surface water, and surface water that fed aquifers would, when extracted, reduce the amount of water available in the aquifer. Similarly, pollution of an aquifer would eventually seep into a surface stream. Accordingly, surface water and groundwater could not easily be separated, either physically or conceptually.

67. There were, of course, instances of confined groundwater; however, the Commission had concluded that it was essential to include groundwater in the definition of a watercourse, precisely because of its relationship to surface water. For those reasons, his delegation supported the Commission's text as drafted.

68. Mr. EPOTE (Cameroon) said that his delegation endorsed the statement made by the United States representative. Since the actions taken by one watercourse State could affect the groundwater of another watercourse State, deleting the term "groundwaters" might make it impossible to impute legal liability in the case of harm caused to a third State.

69. Mr. TANZI (Italy) said that, while his delegation could accept article 2 as drafted, it had no objections to the Turkish proposal to distinguish between watercourses that formed and those that crossed an international boundary; such a distinction was appropriately made in article 1 of the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

70. The proposed deletion of the term "groundwaters" would be a step backwards from established international treaty practice, and would diminish the impact and relevance of the future convention.

71. Mr. MANONGI (United Republic of Tanzania) said that it was difficult to see how the term "groundwaters" could be deleted unless an appropriate alternative was found: a watercourse or river must be viewed as part of a systemic whole. His delegation supported the Egyptian proposal and the earlier proposal by Israel for the inclusion in article 2 of a definition of "watercourse agreements".

72. Mr. PAZARCI (Turkey) said that his delegation's proposal concerned the distinction among contiguous watercourses, watercourses that formed a boundary

and those that crossed a boundary; as recognized by the United States representative, such a distinction had long been accepted in State practice. The definition of the term "international watercourse" should clearly encompass all of those categories.

73. His delegation disagreed with the Syrian view that the legal regime applying to contiguous and successive watercourses was identical. While the convention itself did not make a clear distinction in that regard, its rules might be applied differently in one or the other case; for example, article 6 (Factors relevant to equitable and reasonable utilization), paragraph 1 (a), referred to "geographic ... and other factors of a natural character" which must be taken into account, while paragraph 1 (d) of the same article referred to "the effects of the use or uses of the watercourse in one watercourse State on other watercourse States". Those provisions made it clear that practice differed in respect of watercourse that formed and those that crossed a boundary.

74. Mr. KASSEM (Syrian Arab Republic) said that the definition of "watercourse" contained in the Commission's draft encompassed both watercourses that formed and those that crossed a boundary; in that connection, he drew attention to paragraph (2) of the Commission's commentary to article 2 (A/49/10). The lack of distinction between the two types of rivers or streams - not in respect of their definition, but of the legal regime applying to them - was well established in both treaty law and customary law, and had been confirmed by the International Court of Justice in a celebrated opinion.

75. Mr. LALLIOT (France) said that his delegation had no difficulties with the term "groundwaters" as used in article 2, subparagraph (b), provided that it did not apply to "confined" groundwaters, but only to groundwaters having a physical relationship to an international watercourse. He requested the Expert Consultant to confirm his understanding of the term.

76. Mr. ROSENSTOCK (Expert Consultant) said that the French representative's understanding of the term "groundwaters", as used in the Commission's draft, was correct: it referred to groundwaters that interacted with surface waters and were part of a system.

77. Mr. NGUYEN DUY CHIEN (Viet Nam) said that, while every watercourse undoubtedly had specific characteristics, that did not imply that the definition must include each and every distinguishing feature. His delegation agreed with the Syrian and United States delegations that the definitions of "watercourse" and "international watercourse" were sufficiently clear in the Commission's draft.

78. Mr. CRISÓSTOMO (Chile) said that the term "watercourse" was confusing, as shown by the fact that some delegations wished to replace it with "river", which was far too restrictive a term. His delegation proposed that "watercourse" should be replaced by "hydrographic system", "international watercourse" by "hydrographic system with shared water resources" and "watercourse State" by "State belonging to a hydrographic system with shared water resources".

79. Mr. HABIYAREMYE (Rwanda) said that his delegation welcomed the Turkish proposal, as it made for a more complete distinction between contiguous

watercourses and those that formed a boundary. His delegation was also among those which felt that the term "groundwaters" was superfluous; it would not, however, insist on its deletion. Lastly, his delegation believed that it would have been more logical to define "watercourse" first and then "international watercourse".

80. Mr. MORSHED (Bangladesh) endorsed the views expressed by the United States representative.

81. Mr. MANNER (Finland), reiterating his delegation's comments, contained in document A/51/275, on the term "international watercourse", drew attention to the alternative expression "transboundary waters", which was used in the 1992 ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

82. Mr. REYES (Mexico) said that his delegation too was in favour of the Commission's text and had little to add to the comments by the United States representative. From the technical standpoint the term "international watercourse" was used correctly in article 2 because the source of the waters must always be distinguished from the waters themselves.

83. Mr. LAVALLE VALDÉS (Guatemala) asked the Expert Consultant to say whether a river, for simplicity's sake one without tributaries, which throughout its course ran between two States but with the State frontier established along only one of its banks, would constitute an international watercourse.

84. Mr. ROSENSTOCK (Expert Consultant) said that it was hard to give an answer on such a theoretical situation. It was inconceivable that a river could be so clearly demarcated, lacking any tributaries or distributaries or groundwater flows, that the State frontier could be established along a line at the river's edge. However, in such a situation he supposed that the river would not constitute an international watercourse.

Article 33

85. Mr. MAZILU (Romania) said that his delegation supported the French proposals concerning article 33 (A/C.6/51/NUW/WG/CRP.55).

86. Mr. KASSEM (Syrian Arab Republic) said that it would be possible for States to settle disputes under article 33, but unless the article was made compulsory they would not be obliged to do so. His delegation had therefore submitted an amendment to make all recourse under the article compulsory.

87. Mrs. MEKHEMAR (Egypt) said that the article was too detailed for a framework convention. It should be left to the parties to a dispute to find a peaceful solution under specific agreements.

88. Mr. ŠMEJKAL (Czech Republic) said that his delegation supported the French proposals, preferring the first option therein.

89. Mr. LAVALLE VALDÉS (Guatemala) said that his delegation would prefer provisions concerning a settlement dispute system drafted along the lines of

such instruments as the Framework Convention on Climate Change. It would submit an amendment to that end.

90. Mr. RAO (India) said that his country had always taken the position that disputes should be settled by peaceful means but also by means acceptable to all the parties, a principle established in the Charter of the United Nations. No one party to a dispute must be allowed to impose any specific means of settlement on the other parties. That point was recognized in article 33, but recourse to a fact-finding commission was made compulsory and that might create more problems than it solved. The French proposals were helpful but did not resolve that particular issue. An article such as article 33 should have been avoided in a framework convention.

91. The CHAIRMAN said he took it that the Working Group wished all the proposals on clusters IV and V to be referred to the Drafting Committee.

92. It was so decided.

93. The CHAIRMAN said that there appeared to be two or three groups of delegations with differing positions on the policy issues. Some delegations had initiated coordination work within those groups and had begun to negotiate with the other groups. He hoped that that approach would be vigorously pursued. Such efforts could not of course replace the work of the Drafting Committee but would help to narrow the differences and pave the way to a generally acceptable text.

The meeting rose at 5.40 p.m.